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Promotion and protection of all human rights, civil, political, economic, social and cultural rights, including the right to development

Note verbale dated 30 June 2015 from the Permanent Mission of Malaysia to the United Nations Office and other international organizations in Geneva addressed to the Office of the United Nations High Commissioner for Human Rights

The Permanent Mission of Malaysia to the United Nations Office and other international organizations in Geneva presents its compliments to the Office of the United Nations High Commissioner for Human Rights and the secretariat of the Human Rights Council, and has the honour to refer to the statements delivered by the delegation of Malaysia during the interactive dialogues with the Special Rapporteur on trafficking in persons, especially women and children on 16 June 2015, and the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health on 18 June, during the twenty-ninth session of the Human Rights Council (see annexes I and II).

The Permanent Mission of Malaysia also has the honour to request that both statements* be included as documents of the twenty-ninth session of the Human Rights Council.

* Reproduced as received, in the language of submission only.

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Annex I

[English only]

Main content of the statement made at the interactive dialogue with the Special Rapporteur on trafficking in persons, especially women and children

1. Malaysia wishes to first place on record its appreciation to the SR for undertaking the visit and for the professionalism demonstrated in the discharge of her mandate.

2. The Government of Malaysia had engaged with the SR and her team with an open mind and in a transparent manner with a view to benefit as much as possible from their knowledge and experience. We acknowledge that the constructive engagement with the SR has brought to light certain institutional, policy and implementation gaps which the Government is committed to improve in the context of its overall efforts to promote and protect human rights in the country.

3. In the interest of brevity and given the short time allowed for response, I wish to only make some general remarks on the SR's report at this stage. I wish to inform that following careful study and consultations on the report, Malaysia has duly considered and taken full note of all the recommendations proposed by the SR. My delegation will further elaborate its position in the annex to this statement, which will also be made available in the HRC extranet.

4. Malaysia recognizes that trafficking in persons is an issue which is a real threat to most countries in the world. It is a multifaceted problem which requires extensive coordination and cooperation from all sides of the Government and other relevant interlocutors.

5. Given the complexity of this issue, Malaysia acknowledges that political will is a major factor for the country to achieve intended results in dealing with issues related to trafficking in persons. Therefore, the interagency monitoring mechanism, Council of Anti-Trafficking in Persons and Anti-Smuggling of Migrants, MAPO Meeting has been upgraded to a Ministerial level, now known as the High Level Committee Meeting of MAPO. The meeting is now chaired by the Minister of Home Affairs.

6. While recognising that more remains to be done, the Government is pleased to note that in her report, the SR has recognised the continuous efforts that have been undertaken by Malaysia. This includes the promulgation and amendment of the Anti-Trafficking and Smuggling Migrants Act 2007 (ATIPSOM 2007) as well as the multidisciplinary approach in anti-trafficking measures which involves domestic and international cooperation.

7. While the institutional and legal framework to prevent and combat trafficking is in place in Malaysia, the Government acknowledges the fact that the existing challenge would be to ensure that the mechanism is effective. It must also be able to deal with the ever-changing feature of trafficking in persons, especially when it concerns migration and labour policies.

8. In this regard, the Government takes this opportunity to reaffirm that in its efforts to combat trafficking in persons the Government would further enhance the role of MAPO. This would include a coordinated and efficient approach, among others, through regular policy reviews in order to meet the current challenge of the scourge.

9. For Malaysia, it has been observed that the SR during her visit had placed great emphasis on the protection aspect of the victims. In this regard, my delegation wishes to

reaffirm the Government's commitment to expedite the relevant amendments to ATIPSOM 2007. The amendments to ATIPSOM 2007 would further ensure and improve the prevention and protection aspect for victims of trafficking.

10. Under the newly proposed amendments, ATIPSOM 2007 would allow a greater participation of NGOs in the protection of victims. The Government is proposing for the expansion of the definition of "protection officers" to include both civil servants and NGOs. Taking into account their expertise, NGOs which are recognized as "protection officers" would be able to fully operate shelter homes for the victims. The expansion of NGOs participation as such is being proposed with a view to provide better protection for the victims.

11. The newly proposed amendments would also afford better freedom of movement to the victims. Currently, all victims are prohibited from travelling, working, and residing outside government facilities while under protection orders. They are required to remain in the shelter home for 3 months under the protection orders. Malaysia seeks to review the current 3-months period for victims to be housed in the shelter homes. Malaysia is also considering the possibility of issuing special passes for the victims which will allow them to move and work freely while under the protection orders.

12. Malaysia has also considered the inclusion of the element of compensation for victims of trafficking in the ATIPSOM 2007. The Authorities are currently identifying the most appropriate mechanism to compensate the victims.

13. In conclusion, I wish to reaffirm my Government's commitment to continue to undertaking significant efforts, within available resources and capacity, to improve existing mechanisms to effectively combat trafficking in persons.

Observations of the Government of Malaysia on the report of the visit by the Special Rapporteur on trafficking in persons, especially women and children (A/HRC/29/38/Add.1)

Malaysia offers the following additional clarification on a recommendation listed under paragraph 92 of A/HRC/29/38/Add.1:

(e) Ensure that the ongoing revision of the Child Act 2001 (Act 611) provides further protection for children victims of trafficking;

The Government firmly believes that the protection of children is a shared responsibility between both the authorities and the public.

The Child Act 2001 (Act 611) has been in place with a view to afford to trafficked children temporary care / shelter under the Department of Social Welfare. Section 17 of Act 611 has listed the categories of children as not limited to Malaysians, in need of care and protection. This section is applicable when it constitutes one or more of the element of abuse (physical, mental or sexual), neglect (basic needs), trafficking in persons or exploitation.

The Government is in its final stage of reformulating Act 611 which includes concerns over trafficked children. It has undergone various consultation sessions and engagement with government agencies, non government organisations and academicians. The revised Act will be regarded as comprehensive and sensitive to the needs and protection of children.

Annex II

[English only]

Main content of the statement made at the interactive dialogue with the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health

1. Malaysia wishes to first place on record its appreciation to the SR for undertaking the visit and for the professionalism demonstrated in the discharge of his mandate.

2. The Government of Malaysia had engaged transparently and with an open mind with the SR and his team. This was with a view to glean to from their knowledge and experience ways in which the Government could further improve its delivery of the right to health.

3. The constructive engagement with the SR had highlighted certain institutional, policy and implementation gaps which the Government is committed to improve in the context of its overall efforts to promote and protect human rights in the country.

4. I wish to underline that following careful study and consultations on the report, Malaysia has duly considered and takes full note of all the recommendations proposed by the SR. My delegation will further elaborate its position in the annex to this statement, which will also be made available in the HRC extranet.

5. In his report, the SR assessed issues including those relating to the right to health of non-nationals such as migrants, refugees and asylum seekers. In this regard, the Government views non-discrimination as to non-nationals as not necessarily implying an obligation on States to guarantee to non-nationals the same parameters of rights as to their nationals. The term should be understood to refer to the elimination of arbitrary behavior but not to differences in treatment based on reasonable consideration, in line with Article 2 the United Nations General Assembly Declaration on the human rights of individuals who are not nationals of the country in which they live (A/RES/40/144) 1985, which provides:

'Nothing in this Declaration shall be interpreted as legitimizing illegal entry into and presence in a State of any alien, nor shall any provision be interpreted as restricting the right of any State to promulgate laws and regulations concerning the entry of aliens and the terms and conditions of their stay or to establish differences between nationals and aliens. However, such laws and regulations shall not be incompatible with the international legal obligations of that State, including those in the field of human rights.' (emphasis added)

6. Furthermore, the same United Nations Declaration basically provides that certain civil and political rights, shall be enjoyed by non-nationals in accordance with domestic law and subject to the relevant international obligations of the State, and certain economic, social and cultural rights, shall be enjoyed by non-nationals, in accordance with national law and their obligations to observe the laws of the State in which they reside or are present and regard with respect the customs and traditions of the people of that State.

7. Nevertheless, my delegation wishes to stress that although Malaysia does not recognize the status of refugees or asylum seekers, Malaysia has been providing assistance on humanitarian grounds and continues to cooperate on a case-by-case basis with the UNHCR.

8. There appears to be unnecessary linkages in the SR's report between various aspects of the right to health and gender identity and sexual orientation issues such as the decriminalization of sodomy and the removal of any legal provisions that criminalize same-sex conduct and different forms of gender identity and expression.

9. In the case of Malaysia, cultural or religious beliefs directly influence the views and outlook as well as the law on questions of sexual behavior of the LGBT and condition the moral ethos of communities. Hence, the Government of Malaysia is entitled to maintain the legislation it has.

10. Malaysia is fortunate to have benefitted from a continuous series of governmental legislation, regulations, policies, programmes and activities for the purposes of improving the quality of physical and mental health in Malaysia.

11. My delegation wishes to underscore that while significant success has been achieved in the sector of health, additional measures and efforts can and shall be undertaken towards addressing the needs of the people in their enjoyment of the right to health.

12. In conclusion, I wish to reiterate my Government's commitment to continue ensuring that economic, social and cultural rights, including the right to health for all in Malaysia, could be progressively realized and enjoyed.

Observations of the Government of Malaysia on the report of the visit by the Special Rapporteur on the right to health (A/HRC/29/33/Add.1)

Malaysia offers the following additional clarification on certain recommendations listed under paragraph V of A/HRC/29/33/Add.1:

(a) Ensure that barriers to access sexual and reproductive rights of girls and women in Malaysia are removed, including by providing, regardless of age and marital status, sexual and reproductive health services and comprehensive adequate sexuality education and information;

The Government of Malaysia (GOM) wishes to emphasise that reproductive health education is taught mainly within the subjects of health and physical education and science education. School children are taught on health care including sexual reproduction in the current curriculum through the mentioned subjects and the Ministry of Education (MOE) feels that the curriculum is adequate. The Malaysian curriculum at the moment is able to educate children on basic information on reproductive health care and in order to enable them to make informed decisions on their reproductive health.

Since 1996, the Adolescent Health Services was introduced and gradually integrated into all government health facilities nationwide.

In 2001, the Ministry of Health (MOH) has developed a National Adolescent Health Policy and subsequently the National Adolescent Health Plan of Action as an advocacy tool to various relevant agencies to guide and support the health and development of adolescents in the country through holistic interventions.

MOH has also developed various modules, guidelines, SOPs to train health care providers on provision of quality, comprehensive adolescent friendly health services. Regular training on adolescent health care and counselling skills are conducted at the national, state and district levels to empower primary health care providers to engage and manage teenagers in a friendly, non-judgemental manner taking into consideration the principles of harm reduction, in the best interest of the child as well as their rights for appropriate information and sexual reproductive health services.

(b) Ensure that the legal age for marriage is set at 18 years of age, as established in international human rights standards, and do its utmost to eradicate and prevent child marriage and the negative effects it has on the health and well-being of girls;

On child marriage in Malaysia, the legal age of marriage for a non-Muslim is 18. Non-Muslim females are permitted to marry between the ages of 16 and 18 with the consent of the Chief Minister.

Section 10 of Law Reform (Marriage and Divorce) Act 1976 [Act 164], which provides that "Any marriage purported to be solemnized in Malaysia shall be void if at the date of the marriage either party is under the age of eighteen years unless, for a female who has completed her sixteenth year, the solemnization of such marriage was authorized by a license granted by the Chief under subsection 21(2)".

Section 21(2) [Act 164], provides that "The Chief Minister may in his discretion grant a license under this section authorizing the solemnization of a marriage although the female party to the marriage is under the age of eighteen years, but not in any case before her completion of sixteen years".

Syariah law has provided a strict procedure on child marriage. Under Syariah law, Section 8 of Islamic Family Law (Federal Territories) Act 1984 [Act 303], provides that "No marriage may be solemnized under this Act where either the man is under the age of eighteen or the woman is under the age of sixteen except where the Syariah Judge has granted his permission in writing in certain circumstances". While Section 13 of Act 303 mentions that consent of both parties is required before the marriage is solemnized.

The main principle in the provision is clearly stated that child marriage is not allowed under the law. However in certain cases, the marriage is allowed subject to Syariah Judge's discretion and on reasonable ground may allow such marriage.

Thus, based on the above provisions, notwithstanding that child marriage were allowed, but it is subject to the conditions imposed by the Syariah Judge to ensure that any person under the age are eligible for marriage.

By virtue of the Ninth Schedule of the Federal Constitution, Islamic Law and the constitution, organization and procedure of the Syariah courts have been placed under the jurisdiction of the State whilst the civil and criminal law and procedures and the administration of justice including the constitution and organization of the civil courts under the jurisdiction of the Federal Government. Both courts systems are parallel under the Constitution.

(c) Harmonize national legislation and customary and religious laws with international human rights standards, and the introduce a legal prohibition of harmful practices, including female genital mutilation or female circumcision, supported by initiatives to prevent and address those practices;

A study conducted by Maznah et al (2010) found that majority of Malaysian Muslim women (93.6%) practise female circumcision and yet there is no report of post female circumcision complications amongst girls and women by pediatricians, physicians or obstetricians. Another study by Ab. Rahman (1999) also has shown no clinical evidence of injury to clitoris or labia or evidence of physical sign of excised tissue. This findings concur to study by A.K.Rashid etal (2010), which concluded that the practice of female circumsion in Malaysia is harmless.

This is in contrast to situations observed in other countries where the girls and women experienced complications such as fistula, infibulation, post partum hemorrhage, severe bleeding, infections, and difficulty in passing urine or tissue scarring following FGM.

GOM wishes to further emphasise that Malaysia upholds individual rights to religion and religious practices. Male and female circumcisions are advocated among the Muslim community. MOH has taken steps to ensure if the practice is to be continued, it has to be guided by a clear medical and religious policy.

GOM wishes to underline that the SR's proposition that certain beliefs and practices such as female genital mutilation impede efforts to prevent and eliminate discrimination and violence against women. This erroneously refers to female circumcision as practised in Malaysia. In fact, standards and guidelines have been established by the relevant authorities to ensure that female circumcision as practiced in Malaysia conform to the religious requirements and medical procedure standards. In essence, the position of Malaysia on female gender mutilation is clear where we condemn the practice as it violates women's human rights and is a form of sexual abuse and discrimination which has a detrimental effect on women's health.

(d) Take the necessary measures so that indigenous communities enjoy their right to health by ensuring access to information and that health services are available, accessible, affordable, adequate and of good quality;

(e) Involve indigenous communities in the health decisions that affect them by consulting them in advance on relevant policies and providing health-related information in a culturally sensitive manner;

JAKOA facilitates and protects the interest of Orang Asli to land, territories and resources. However, land administration in Malaysia falls under the jurisdiction of the respective states, apart from the federal government of which JAKOA is a part of.

At present, JAKOA continues its consultation with the Orang Asli community with regards to various issues affecting them according to consultation mechanism based on human rights standard.

(f) Ensure that non-nationals, in particular undocumented migrants, refugees and asylum seekers, can afford to access public health care, and consider exempting them from the increase in fees;

It is the MOH policy to treat all patients without discrimination; citizen and non-citizen (legal and illegal immigrants). Medical Personnel at all health facilities shall provide care to all patients according to their clinical status. In many cases, illegal immigrants are admitted to the wards and Intensive Care if the clinical condition warrants it.

(g) Ratify the 1951 Convention relating to the Status of Refugees and its 1967 Protocol in order to ensure adequate protection of refugees and asylum seekers;

Although Malaysia is not a signatory to the 1951 Convention relating to the Status of Refugees and the related 1967 Protocol, it has, nevertheless been responding to and providing assistance to refugees coming to the country on humanitarian grounds. Malaysia also continues to cooperate with the UNHCR and other international organisations dealing with refugees and asylum seekers on a case-by-case basis.

It is important to note that the 'UNHCR Cardholders' in Malaysia enjoy freedom of movement, access to local healthcare facilities and medical treatment at any local healthcare institution at a rate of 50% less than stipulated for foreigners. Vaccination for children is also given free of charge.

(h) End the practice of establishing immigration counters in public hospitals, and of arresting undocumented migrant and asylum-seeking women who have just given birth in these hospitals;

There are 17 detention centres in Malaysia. All detention centres are attached to the nearest healthcare clinics. A team of Healthcare Personnel will do health visits at regular intervals, at least once in every two weeks. Necessary treatment will be given to all detainees as required. Antenatal mothers are brought the nearest government health clinics for regular antenatal examination and follow-ups.

(i) Ensure that the conditions of immigration detention centres are up to international standards, and ensure that they are regularly monitored by the relevant authorities and institutions, including the Ministry of Health, Suhakam, the International Committee of the Red Cross, and UNHCR;

The standard menu is four (4) times daily inclusive of breakfast in the morning and hi-tea in the afternoon.

The detainees are given time to do recreational activities outside their block everyday

The Immigration Detention Centre is just transit place for a detainee before repatriation to home country. It is also in the process of improving inside the depot as suggested by the NGOs such as Suhakam and ICRC.

(j) Decriminalize sodomy and remove any legal provisions that criminalize same-sex conduct and different forms of gender identity and expression so as to guarantee that the existing legal framework is in accordance with the Federal Constitution and international human rights law;

(k) Legally recognize the gender identity of transgender people and prohibit any discrimination on the basis of gender identity in all areas, including health, education, employment and access to public services;

The GOM wishes to emphasise that any arrest made is in accordance to the Standard Operation Procedure of the department. The transgender are identified and are separated from the male and female detainees in a different cell. The GOM wishes to emphasise that the existing laws do not prohibit transgender men or women from the right to access healthcare. The GOM does not condone discrimination and violence towards anyone seeking health care services; including prevention, testing and care.

(l) Put an end to State-led programmes that expose and punish LGBT children, and ensure that they enjoy safe and enabling spaces in schools, and other public and private institutions;

GOM wishes to emphasise that its Ministry of Education has never introduced any 'corrective therapies' to change sexual orientation of adolescents. All child is treated equal and the Ministry of Education does not identify a child's sexual orientation.

Some of the programs implemented by Department of Islamic Development (JAKIM) aim to give awareness to these groups. The programs are focused on the treatment of spirituality and awareness.

Malaysia will continue our effort to provide good and quality care and services for children. We have been and are still working closely to increase efforts to curb with non-communicable diseases and promoting healthy lifestyles.

Malaysia, through the Ministry of Education, educates children and protects children's rights through anti bullying campaign and counselling in schools by school counsellors. MOE even has a hotline and this is promoted throughout all schools and media where children or any individual can report if there is any wrong doing or abuse towards school children.

It is pertinent to highlight that in addressing mental health in school, MOH collaborates with the Ministry of Education to establish a Healthy Mind Programme in schools which include screening for stress, anxiety and depression as well as provide intervention on stress management.

(m) Ban corporal punishment in public and private settings, and change the focus of child policies to move away from punitive approaches to promote the well-being and autonomy of children;

MOH does provide input to the Ministry of Education on the effects of mental health in relation to punishment in school, for example caning.

(n) Continue developing a system of user-friendly community-based services for children and adults with developmental and psychosocial disabilities, and ensure that the rights of these persons are respected, promoted and protected in accordance with the standards set by the Convention on the Rights of Persons with Disabilities;

Malaysia had formulated the Policy and Plan of Action for Persons with Disabilities in 2007. The National Policy on Persons with Disabilities and its Plan of Action which were drafted based on the Convention on the Rights of Persons with Disabilities, serve as the foundation and basis to ensure persons with disabilities in Malaysia enjoy their full and effective participation in society on an equal basis with others.

The implementation of the Policy involves 15 areas of focus relating to persons with disabilities which include advocacy, accessibility, health, rehabilitation, education, employment, personal safety and social security, support services, social, development of human resource, participation of society, research and development, housing, children with disabilities and women with disabilities.

Apart from the National Policy and Plan of Action for Persons with Disabilities, in December 2007, the Parliament of Malaysia passed the Persons with Disabilities Act which came into force in July 2008. The Act is aimed at ensuring that the rights, interests and welfare of persons with disabilities are protected.

The Ministry of Education has Special Needs Education Division that specifically looks into children with special needs. The number of schools for children with special needs is growing. There are also classes for children with special needs in mainstream schools and the number of these integrated schools is also growing.

MOH is moving towards promoting good mental health and mental wellbeing to reduce stigmatization and discrimination towards those with mental disorders.

This is done through public health education, health campaigns and media.